

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF TEXAS

3 — — —

4 THE HONORABLE GEORGE C. HANKS, JR., JUDGE PRESIDING

5 UNITED STATES OF AMERICA, No. 4:21-000009-1

6 Plaintiff,

7 vs.

8 ROBERT T. BROCKMAN,

9 Defendant.

10 STATUS CONFERENCE

11 OFFICIAL REPORTER'S TRANSCRIPT OF PROCEEDINGS

12 Houston, Texas

13 January 22, 2021

14 APPEARANCES:

15 For the Plaintiff: Corey Smith, Esq.
Eric Powers, Esq.

17 For the Defendant: Jason Varnado, Esq.

18 Reported by: Nichole Forrest, RDR, CRR, CRC
19 Official Court Reporter.
20 United States District Court.
21 Southern District of Texas
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22 Proceedings recorded by mechanical stenography.
23 Transcript produced by Reporter on computer.

24

25

PROCEEDINGS

09:36:26

09:36:28

(The following proceedings held in open court.)

(Proceedings held via Zoom.)

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THE COURT: Great. Welcome, everyone.

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I apologize for the delay. I'm in the middle of a bench trial on another Zoom trial and it just went a little long this afternoon before the break.

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I have reviewed the materials in this case that have been submitted by the parties. And the first thing I wanted to talk to you is just about how this case is going to proceed; sort of a plan for going forward.

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I did read the transcript of the hearing that you had before Judge Edison, and the issues that you wanted to raise with me on possibly a competency hearing and other things.

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So let me start with the government exactly. Have you talked to defense counsel about a comprehensive plan for moving forward?

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MR. SMITH: Yes, Your Honor, we have. We've been conferring. The government -- this is edited from the pleadings. The government agrees

12:19:45 1 that a competency hearing is appropriate here. We
12:19:47 2 don't object. We do have some issues on discovery.
12:19:49 3 But we can address that at another time.

12:19:52 4 So there has been almost no discovery
12:19:56 5 of medical records to prepare for the competency
12:19:58 6 hearing.

12:19:59 7 So we do have a proposal. The
12:20:02 8 government plans on issuing some subpoenas, probably
12:20:04 9 next week to obtain some of the defendant's medical
12:20:07 10 records. We anticipate filing a motion.

12:20:09 11 We would ask the Court to ask that
12:20:12 12 those -- order those records be produced in 30 days.
12:20:15 13 We're probably going to need another 30 days for our
12:20:18 14 experts to evaluate those, write reports, exchange
12:20:21 15 those reports.

12:20:22 16 So in short, we're talking about at
12:20:24 17 least 90 days before we can actually have a
12:20:27 18 competency hearing. And we're probably -- just to
12:20:33 19 be on the safe side, we're talking about sometime in
12:20:36 20 June for a competency hearing.

12:20:38 21 Of course, we would ask that the time
12:20:39 22 between now and that competency hearing be excluded
12:20:44 23 under the Speedy Trial Act, which, of course, then
12:20:46 24 would push the trial back quite a bit.

12:20:50 25 THE COURT: Okay.

12:20:52 1 One quick thing. Ms. Clair, is the
12:20:52 2 court reporter on?

12:20:52 3 CASE MANAGER: Yes. You have Nichole
12:21:01 4 Forrest.

12:21:01 5 THE COURT: Oh, okay. Great. I just
12:21:01 6 wanted to make sure. I'm sorry, Ms. Forrest. I
12:21:02 7 wanted to make that you'd switched back from the
12:21:04 8 trial.

12:21:04 9 THE COURT REPORTER: Yes, Your Honor. I
12:21:12 10 apologize, Your Honor.

12:21:12 11 THE COURT: Not a problem.

12:21:13 12 I'm sorry, Mr. Smith. You can go
12:21:14 13 ahead. I just wanted to make sure we're on the
12:21:17 14 record.

12:21:19 15 MR. SMITH: Sure, Your Honor. No
12:21:19 16 problem. So in -- counsel, as I said, we've
12:21:22 17 conferred. We have some discovery that needs to be
12:21:25 18 done. The government is going to be seeking to have
12:21:28 19 our experts evaluate Mr. Brockman, which is going to
12:21:31 20 take some time. They're going to need some time to
12:21:33 21 evaluate Mr. Brockman's medical records, minimum of
12:21:38 22 90 days just to get to that point.

12:21:40 23 We were looking at a possible
12:21:43 24 competency hearing sometime in June, which, of
12:21:46 25 course, we would have to push the trial date until

12:21:48 1 after that time.

12:21:53 2 MR. VARNADO: Your Honor, again, this is
12:21:54 3 Jason Varnado for Mr. Brockman. I just wanted to
12:21:57 4 respond a little bit to Mr. Smith.

12:21:59 5 That's absolutely correct. We've been
12:21:59 6 trying to work cooperatively with the government to
12:22:02 7 sort of come up with a process of protocol for the
12:22:04 8 competency hearing now that the government has
12:22:07 9 agreed that a hearing is appropriate.

12:22:08 10 And assuming the Court agrees also, we
12:22:10 11 would prepare an order in this matter as opposed to
12:22:14 12 the one that was attached to the motion in the
12:22:17 13 Northern District of California, you know, that that
12:22:17 14 sets that forth; that the Court agrees and is
12:22:20 15 ordering that a competency hearing take place.

12:22:22 16 Also, I wanted to put on the record,
12:22:24 17 that the government has agreed that the evaluation
12:22:28 18 that would take place to lead up to that competency
12:22:30 19 hearing of Mr. Brockman is going to be a
12:22:32 20 non-custodial evaluation.

12:22:34 21 And they've agreed to that so that
12:22:36 22 their expert would come to Mr. Brockman's location
12:22:38 23 and conduct that examination there, as opposed to
12:22:40 24 any sort of custodial setting. I wanted to make
12:22:43 25 sure that was clear for the Court and get that

12:22:44 1 agreement on the record.

12:22:48 2 THE COURT: Great. Will you be able to
12:22:51 3 provide a -- an order for the Court that's signed
12:22:56 4 setting out the timetables that you would like the
12:22:59 5 Court to input?

12:23:01 6 If you could do that -- maybe let's
12:23:03 7 say by -- today is Friday -- by next Friday to have
12:23:06 8 that timetable in place?

12:23:09 9 And then with respect to the medical
12:23:13 10 records, have you guys talked about, you know, where
12:23:14 11 those records are, how difficult it's going to be to
12:23:17 12 produce them.

12:23:22 13 MR. VARNADO: So --

12:23:22 14 THE COURT: Oh, I'm sorry.

12:23:23 15 MR. VARNADO: I apologize, Judge. I'm
12:23:25 16 sorry, I think I interrupted you. We have had those
12:23:29 17 conversations. The awkwardness of the video, I
12:23:29 18 apologize.

12:23:31 19 So Mr. Smith had mentioned that
12:23:34 20 there's been almost no discovery. But attached to
12:23:36 21 the actual motion for the competency hearing are a
12:23:38 22 number of reports that contain, you know, medical
12:23:41 23 records and evaluations and things of that nature.

12:23:43 24 So there -- they do have that
12:23:45 25 information, which in many competency hearings or

12:23:48 1 context they're far ahead of where they normally
12:23:51 2 would be.

12:23:52 3 We've talked to the government about
12:23:53 4 their desire to subpoena medical records. And we do
12:23:56 5 not intend to impede their ability and their desire
12:23:59 6 to get relevant medical records pertaining to Mr.
12:24:03 7 Brockman's and that bear on his present health
12:24:05 8 condition that render him unable to assist in his
12:24:07 9 own defense.

12:24:09 10 We have heard from the government that
12:24:12 11 they're interested in sort of every doctor that's
12:24:14 12 ever examined Mr. Brockman, unbounded at the time.
12:24:14 13 And that's not going to work.

12:24:21 14 We're trying to figure out which of
12:24:23 15 these proposed subpoenas and parameters we can agree
12:24:24 16 to. And hopefully we don't have to bother the Court
12:24:26 17 with those. And it will be an unopposed motion.

12:24:32 18 But there may be some that -- where
12:24:32 19 the government is asking for more than we think that
12:24:34 20 there is required or appropriate for this particular
12:24:35 21 proceeding. And that that may be something that is
12:24:36 22 decided in a contested motion.

12:24:39 23 But to your question about schedule,
12:24:40 24 we absolutely should be able to set forth, and I
12:24:42 25 think we have agreed upon the general parameters of

12:24:43 1 what needs to take place. And could easily get that
12:24:46 2 on file for the Court to sign in short order, just
12:24:49 3 setting out the dates, leading up to a competency
12:24:51 4 hearing.

12:24:53 5 THE COURT: Great. If you could do that
12:24:54 6 by next Friday, that would be helpful.

12:24:56 7 And then if there is an agreement
12:25:00 8 on -- if there is an agreement on the production of
12:25:05 9 medical records, include that. If there isn't,
12:25:07 10 request another hearing. And then we'll have a
12:25:10 11 hearing on what -- you know, what needs to be done
12:25:13 12 about the medical records.

12:25:18 13 MR. SMITH: So the status of where we
12:25:20 14 are on obtaining medical records is we're preparing
12:25:22 15 to file a motion. There is an area where there is
12:25:27 16 an agreement. And there is an area where there is
12:25:28 17 not an agreement.

12:25:29 18 In the area where there is not an
12:25:31 19 agreement we are preparing a motion we hope to file
12:25:34 20 on Monday outlining those issues. And maybe perhaps
12:25:39 21 the Court may want to set that up for a hearing. We
12:25:42 22 can orally go into those. I'm sure the Court
12:25:44 23 doesn't want to go into them now.

12:25:47 24 THE COURT: No. I like to get the
12:25:49 25 motion filed. Give the other side a chance to

12:25:51 1 respond. And then we'll set a hearing.

12:25:54 2 MR. SMITH: Absolutely. We should have
12:25:55 3 our motion filed first thing next week.

12:25:58 4 THE COURT: If you could get it filed by
12:26:00 5 next Wednesday, that way I'll have that on the
12:26:03 6 record.

12:26:04 7 I'm just writing all this down. And
12:26:05 8 making deadlines so my case manager will know when
12:26:10 9 to expect things so that I'll know when to check up
12:26:13 10 on. So...

12:26:15 11 MR. SMITH: Very good, Your Honor.

12:26:16 12 THE COURT: Let's any motions for
12:26:18 13 medical records by Wednesday. If you give me by
12:26:22 14 next Friday, a schedule going forward, that would be
12:26:26 15 great.

12:26:27 16 Then also, my understanding was the
12:26:28 17 parties are going to file a stipulation regarding
12:26:32 18 excludable delay. Has that been done or --

12:26:38 19 MR. VARNADO: Judge, we presently have
12:26:39 20 delay excluded and agreed upon through, I believe,
12:26:41 21 what is currently set as a trial date in May. But
12:26:46 22 competency is one of those motions that by
12:26:48 23 excludable under speedy trial.

12:26:52 24 So we'll work with the government to
12:26:53 25 get whatever we need on file to ensure that we have

12:26:56 1 excludable delay and it's well documented, and if
12:26:59 2 it's okay with Your Honor up to and through the time
12:27:01 3 that a competency hearing is set. And, you know,
12:27:03 4 may even go beyond.

12:27:04 5 Whatever is easiest for the Court and
12:27:06 6 the government, we're happy to accommodate.

12:27:08 7 THE COURT: Okay. If you could, because
12:27:10 8 I thought that there was some issue that the time
12:27:13 9 for excludable delay might expire today. I wasn't
12:27:17 10 sure about that.

12:27:20 11 So is that not correct? I just wasn't
12:27:23 12 sure. I had seen something from my -- from my law
12:27:29 13 clerk on that issue. I just wanted to make sure
12:27:30 14 there was no problem.

12:27:33 15 MR. VARNADO: Judge, no, in your order
12:27:35 16 on document number -- Docket No. 17, January 15, you
12:27:39 17 entered an excludable delay order that runs from
12:27:42 18 January 15 through May 3rd of 2021.

12:27:42 19 THE COURT: Okay. Perfect.

12:27:45 20 MR. VARNADO: Pursuant to that, I think
12:27:46 21 we're covered for the short term.

12:27:47 22 THE COURT: Okay. Great.

12:27:49 23 Okay then. Is there anything else we
12:27:51 24 need to talk about? Once we get that schedule in
12:27:53 25 place, the motions filed, we can move forward.

12:27:56 1 Anything else that is going on?

12:27:58 2 One other thing. Just for the record,
12:28:00 3 I wanted to note, is that Mr. Brockman on the line?

12:28:06 4 MR. VARNADO: Mr. Brockman is on
12:28:08 5 by video. There are so many people on. I would
12:28:08 6 have to scroll over to see.

12:28:11 7 But, yes, it says Robert Brockman.
12:28:12 8 That is Mr. Brockman, Your Honor.

12:28:13 9 THE COURT: Great. I just wanted to
12:28:15 10 make sure that the record reflected that he is
12:28:17 11 present at the hearing.

12:28:19 12 MR. VARNADO: Great. Thank you.

12:28:20 13 THE COURT: Is there anything else we
12:28:21 14 need to talk about this afternoon?

12:28:24 15 MR. SMITH: Not from the prosecution
12:28:26 16 team for the government, Your Honor.

12:28:27 17 THE COURT: Mr. Varnado?

12:28:29 18 MR. VARNADO: Well, I'm waiting for
12:28:31 19 Mr. Powers who seems to be eagerly about to say
12:28:33 20 something. And since he's made an appearance here
12:28:34 21 on behalf of the taint team I may -- it is
12:28:37 22 appropriate to let him go first.

12:28:39 23 But we certainly are going to have
12:28:41 24 something to say with respect to his remarks.

12:28:43 25 THE COURT: Okay. Mr. Powers.

12:28:43 1 MR. POWERS: Your Honor, we would defer
12:28:46 2 to the defense as to whatever they'd like to raise.

12:28:51 3 We're here as our motion reflects in a
12:28:55 4 limited appearance capacity; simply to represent the
12:28:59 5 U.S. filter team in this matter to assist the Court
12:29:03 6 with the review of the search warrant.

12:29:04 7 So with that, I defer to Mr. Varnado.

12:29:05 8 MR. VARNADO: Well, then I will go ahead
12:29:09 9 and raise it, Judge. And, again, I know that the
12:29:11 10 Court prefers to have things on motions filed. And
12:29:15 11 it may be that we end up needing to file a motion to
12:29:18 12 compel.

12:29:19 13 But if -- with the Court's indulgence
12:29:21 14 I could preview perhaps what the taint team's role
12:29:23 15 is here and where there is a potential dispute
12:29:25 16 between the parties, if that would be agreeable to
12:29:27 17 the Court? It should not take too long.

12:29:30 18 THE COURT: Sure. I don't want to get
12:29:33 19 too much into the merits of discussion. Just give
12:29:35 20 me kind of 30,000-foot view, so I'll be prepared
12:29:39 21 when I get the motions. Whatever I receive, I'll be
12:29:41 22 able to get on it pretty quickly.

12:29:44 23 MR. VARNADO: The high level of this,
12:29:45 24 Judge, is that the prosecution team ran search
12:29:52 25 warrants at the residence -- the home office and a

12:29:55 1 storage facility of Mr. Brockman's tax lawyer in
12:29:58 2 August of 2018.

12:30:01 3 Over a series of dates there was
12:30:04 4 eventually a filter team protocol that was entered
12:30:06 5 by Judge Johnson in January of 2019. That set forth
12:30:10 6 the process by which the filter team should provide
12:30:15 7 the privilege holders documents such as Mr.
12:30:18 8 Brockman -- his document is in the possession of his
12:30:21 9 attorney -- so that Mr. Brockman could assert
12:30:23 10 privilege and could examine those materials.

12:30:27 11 In the Spring of 2019 and May of 2019,
12:30:29 12 we were assured that these documents would be
12:30:32 13 forthcoming soon. We had some letter exchanges,
12:30:36 14 both in June of 2019, and in January of 2020.

12:30:41 15 We asked Mr. Powers for those
12:30:43 16 documents. We still had not gotten the records
12:30:45 17 pursuant to Judge Johnson's protocol. And we heard
12:30:45 18 nothing in response to either of those letters. And
12:30:54 19 here we sit today and we still do not have those
12:30:56 20 documents.

12:30:58 21 I anticipate and the status report
12:31:00 22 that the government -- that the filter team filed
12:31:04 23 yesterday, which is Document No. 24, says that they
12:31:09 24 began reviewing the documents in 2019, so well over
12:31:12 25 a year ago, and believe they ran into a roadblock

12:31:15 1 due to a sealed matter in a different district. In
12:31:19 2 the Northern District of the California there is a
12:31:20 3 separate search warrant that. That matter is still
12:31:23 4 sealed. So I'm limited in what I can say.

12:31:28 5 But I want to tee up for the Court
12:31:29 6 that we think that there has been an incredible
12:31:31 7 amount of delay, inexcusable delay of very important
12:31:33 8 documents belonging to Mr. Brockman and the custody
12:31:36 9 of his tax lawyer -- and this is a tax case -- that
12:31:39 10 essentially the taint team has elected to not do
12:31:43 11 anything to address this perceived conflict -- and
12:31:45 12 we will represent that I'm comfortable saying when
12:31:47 13 you see it you will not think it is a conflict --
12:31:51 14 for over 13 months.

12:31:52 15 So we're at the point where now
12:31:55 16 Mr. Brockman is indicted. The filter team has had
12:31:58 17 these documents. And the government has had these
12:32:00 18 documents for close to three years; two-and-a-half
12:32:03 19 years at least.

12:32:04 20 And we're going to need to break this
12:32:05 21 log jam. And we don't think breaking the log jam is
12:32:08 22 anywhere as complicated as the filter team does.
12:32:10 23 They simply need to provide us with the records.

12:32:16 24 THE COURT: Great overview. Okay.
12:32:17 25 That's a great overview. I guess I just need the

12:32:20 1 appropriate motion now. There are motions that need
12:32:24 2 to be filed. They can be filed and I will key them
12:32:26 3 up. And we'll have oral argument and get to some
12:32:31 4 resolution so we can move forward.

12:32:34 5 MR. VARNADO: If I could there is --
12:32:37 6 Mr. Powers, I'm sorry. I didn't mean to cut you off
12:32:38 7 if you were going to say something.

12:32:40 8 MR. POWERS: Well, Your Honor, I think
12:32:43 9 that it's clear that you would like to rule on the
12:32:47 10 motions, and we'll certainly respond to anything
12:32:50 11 that Mr. Brockman's counsel provides.

12:32:55 12 Just what we would simply very shortly
12:32:58 13 provide to the Court is the fact that there is what
12:33:03 14 the filter team views as a conflict between the
12:33:08 15 rulings of another District Court and the rulings in
12:33:12 16 the Southern District of Texas from Judge Johnson
12:33:15 17 that prevented us upon reviewing -- upon actually
12:33:19 18 obtaining the documents and having them culled by
12:33:24 19 our litigation services team which took several
12:33:26 20 weeks, not months.

12:33:28 21 That prevented us from actually
12:33:30 22 permissibly being able to review them.

12:33:34 23 THE COURT: I'm sorry. I don't mean to
12:33:35 24 interrupt. But we're getting into the merits. I
12:33:39 25 don't really need to hear that right now. I need

12:33:40 1 to -- I want the parties to put it in writing and
12:33:44 2 paper. Because it's great to, you know, to hear the
12:33:50 3 arguments, but it's kind of like, it's not really
12:33:51 4 helpful because I can't do anything about it without
12:33:53 5 pleadings before me.

12:33:53 6 MR. POWERS: Very good, Your Honor. We
12:33:53 7 can rely on our pleadings for sure.

12:34:00 8 THE COURT: Okay. So submit to me
12:34:00 9 whatever you need me to look at. I'll get to it
12:34:04 10 quickly since I know this is top priority, and I
12:34:09 11 will get it resolved just as quickly as I can.

12:34:12 12 MR. VARNADO: Judge, if I could raise
12:34:14 13 just one more issue. I know you're in the middle --
12:34:15 14 this will not take time. This is not something I
12:34:18 15 think requires briefing.

12:34:20 16 Obviously, Mr. Brockman -- we believe
12:34:22 17 this case is likely not to proceed to trial due to
12:34:25 18 Mr. Brockman's health condition. But we have an
12:34:27 19 ethical obligation as attorneys to also begin to
12:34:30 20 prepare for trial in the event that we're
12:34:32 21 unsuccessful.

12:34:35 22 And the government has provided a vast
12:34:37 23 amount of discovery. They've given us five million
12:34:40 24 pages of documents. It's a big case. There's a lot
12:34:43 25 of records.

12:34:43 1 But we've repeatedly asked questions
12:34:45 2 about *Brady* material. And it -- gotten some sort of
12:34:49 3 unsatisfactory answers.

12:34:51 4 In particular, on a meet-and-confer on
12:34:53 5 December 10 of this last year, one of the
12:34:56 6 prosecutors from the Northern District, who is not
12:34:57 7 on this matter any more, you know, essentially
12:35:01 8 intonated he intended to hold back on *Brady* and
12:35:05 9 *Giglio* until the very end of the discovery process,
12:35:07 10 and that he didn't hand out such information
12:35:09 11 willy-nilly. And that government witnesses weren't
12:35:11 12 expecting that information to be released so
12:35:14 13 quickly.

12:35:14 14 A couple of weeks later we got a
12:35:16 15 letter from Mr. Smith that set forth in a one
12:35:21 16 paragraph letter, that their primary cooperating
12:35:23 17 witness of it to mean, who the government has
12:35:26 18 immunized in exchange for his cooperation with
12:35:29 19 Mr. Brockman, has made statements that are clearly
12:35:31 20 *Brady* material that he did not believe, meaning Mr.
12:35:34 21 Timine, that he was engaged in tax evasion or money
12:35:36 22 laundering when we worked for Mr. Brockman.

12:35:38 23 THE COURT: I don't mean to cut you off
12:35:40 24 again, but I think the quickest way to do this
12:35:44 25 efficiently is include a deadline for filing a

12:35:47 1 motion to produce that material as part of your
12:35:51 2 schedule with the Court. That way everybody will
12:35:53 3 know when to expect it. I'll know when to expect
12:35:55 4 it. And then we'll move on from there.

12:35:55 5 MR. VARNADO: I will certainly do that,
12:35:59 6 Your Honor.

12:35:59 7 THE COURT: You got arguments to make
12:36:00 8 and I don't want to, you know, cut you off. But
12:36:03 9 it's not really productive to talk about that right
12:36:05 10 now until I have the motions before me. And then
12:36:08 11 both sides get an opportunity to respond.

12:36:12 12 MR. VARNADO: Fair enough, Your Honor.
12:36:14 13 We'll make our *Brady* motion just so we can kindly
12:36:16 14 get that information.

12:36:16 15 Thank you very much.

12:36:17 16 THE COURT: Not a problem. And if you
12:36:18 17 could put that in your schedule, that you're going
12:36:21 18 to submit to the Court by next Friday, that is, give
12:36:23 19 me -- you don't -- obviously, if you're late or
12:36:26 20 whatever, that is not a problem. But just --
12:36:29 21 because this is a criminal case. But just submit to
12:36:30 22 me a date by which you plan to get that material to
12:36:34 23 me -- those motions to me.

12:36:36 24 If you can't, ask the Court for more
12:36:38 25 time. Obviously, I'm going to give it to you. This

12:36:41 1 is just more a place-marker so I'll know how the
12:36:44 2 case is proceeding and when to expect motions from
12:36:46 3 parties.

12:36:48 4 If you need more time, don't hesitate
12:36:49 5 to ask, but we do need, in effect, a scheduling
12:36:53 6 order in place.

12:36:55 7 MR. VARNADO: Very good, Your Honor.

12:36:57 8 THE COURT: Great.

12:36:58 9 Well, thank you all for being available.
12:37:00 10 I look forward to working with all of you in this
12:37:02 11 case. And I look forward to your filings next week.

12:37:08 12 Take care, everyone. Y'all may be
13 excused.

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15 (Proceedings concluded.)

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1 TELEPHONIC OR VIDEO CONFERENCE CERTIFICATE

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4 I, Nichole Forrest, RDR, CRR, CRC,

5 certify that as an Official Court Reporter in the

6 United States District Court, Southern District of

7 Texas, I have transcribed the telephonic/video

8 conference hearing of the foregoing entitled case to

9 the best of my ability; that any indiscernible

10 designations are because of audio interference that

11 precluded me from understanding the words spoken;

12 and that the foregoing typewritten matter contains a

13 full, true and correct transcript of my

14 understanding of the aforesaid proceedings as

15 recorded to the best of my skill and ability.

16

17

18

19 /S/ Nichole Forrest

20 _____

21 Nichole Forrest, RDR, CRR, CRC

22 Official Court Reporter

23

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